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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.127 OF 2006

Smt.Urmila Varma w/o Shankar Varma — Applicant
versus
Shankar Richhpal Varma — Respondent

Mr.Nitin P. Deshpande for applicant.
M/s.M.M.Chopra & Associates for respondent.

CORAM : A.S.OKA, J.

DATE : 17th April 2007

PC :

1. Heard learned advocates appearing for the parties. This is an application filed by the wife invoking provisions of Section 24 of the Code of Civil Procedure, 1908 for transfer of a petition for divorce filed by the respondent-husband from the file of Family Court at Bandra, Mumbai to the Court of learned Civil Judge, Senior Division, Pune. Due to the efforts made by the advocates appearing for the parties an amicable settlement has been arrived at and consent terms are filed on record. The consent terms provide that both the parties will file appropriate application before the Family Court

at Mumbai for converting the petition filed by the respondent into a petition under section 13-B of the Hindu Marriage Act, 1955 for obtaining a decree of divorce by mutual consent. Adequate provision has been made in the consent terms for payment of maintenance to the minor children. The consent terms are filed considering the peculiar facts of this case. The allegation made in this application is that both the parties are tested HIV Positive and same is the case with the daughters. An application has been filed by the advocates appearing for the parties seeking certain directions to the Family Court at Bandra for converting the pending petition into a petition for divorce by mutual consent. The said application is taken on record.

2. The parties have agreed that they want to dissolve the marriage by obtaining a decree for divorce under section 13-B of the Hindu Marriage Act, 1955. My attention was invited to a decision of the Division Bench of this Court in the case of Rajashri Rajendra Shasane V/s Rajendra Baurao Shasane reported in 1997(1)-Mh.L.J.-254. The Division Bench has held that the provisions of sub section 2 of section 13-B are mandatory and no discretion is given to

the Court to convert a petition for seeking a divorce under section 13 on the ground of cruelty unless the said conversion is done by mutual consent of both the parties. The Division Bench observed that it is also a mandatory in view of the provision under section 23(1)(bb) of the said Act of 1955 that before passing a decree under section 13-B, the Court has to satisfy itself that the consent has not been obtained by force, fraud or undue influence.

3. In the present case, in the consent terms, both the parties have recorded their desire to obtain a decree of divorce by mutual consent. I had kept the matter in the chamber on 10th April 2007 when both the parties were present. Both the parties agreed before me that they have understood the contents of consent terms and they are agreeable to an order being passed on the basis of the consent terms. Both the parties have shown willingness to appear before the Family court and to apply for conversion of the pending petition for divorce into a petition under section 13-B of the said Act of 1955. Learned counsel for the parties pointed out to me that considering the peculiar facts of the case which are narrated above, it will be unjust for

both the parties if they are required to wait for a period of six months as provided in sub section 2 of section 13-B of the said Act of 1955 before a decree for divorce is passed.

4. The petition for divorce has been filed by the respondent-husband in April 2006. The parties have agreed to convert the said petition into a petition under section 13-B. Considering the terms which are recorded in the consent terms and considering the statements made by the parties when they appeared before me in Chamber, it is obvious that the consent which is recorded in the consent terms has not been obtained by force, fraud or undue influence. The parties have consciously agreed to the terms which are incorporated in the consent terms. Therefore, if the application for amendment of the pending petition is made jointly by the parties, the Family Court will have to permit the amendment and allow the conversion of the petition into a petition under section 13-B of the said Act of 1955. If amendment is carried out, in the peculiar facts of the case, the amendment will relate back to the date on which the original petition was instituted by the respondent and, therefore, without waiting for expiry of a

further period of six months from the date on which the amendment is carried out, it will be open for the Family Court to pass a decree for divorce by mutual consent.

5. Hence, this application is disposed of by passing following order :-

(a) The parties are directed to appear before the Family Court on 30th April 2007 at 11.00 a.m.. On that day the parties are free to file a joint application before the Family Court for converting the Matrimonial Petition No.1079 of 2006 filed by the respondent in to a petition under section 13-B of the Hindu Marriage Act, 1955;

(b) A true copy of the consent terms duly signed by both the parties and their respective advocates will be produced on record along with the said application;

(c) If such application is made, the Family court will allow the same and will permit the parties to carry out the amendment to the pending petition;

(d) As the petition filed by the respondent is pending from April 2006, considering the peculiar facts of this case, the amendment made to the pending petition will relate back to the date of presentation of the petition filed by the respondent. The Trial Court will proceed to dispose of the amended petition in accordance with law by treating the petition filed by the respondent as one under section 13-B of the Hindu Marriage Act, 1955;

(e) While disposing of the petition, the Family court will incorporate all relevant directions therein on the basis of the consent terms duly singed by the parties;

(f) The Family Court will act upon an ordinary copy of this order duly authenticated by Registry of this Court. The Registry of this Court will forward a xerox copy of the consent terms filed by the parties to this application alongwith the writ of this order;

(g) Application is disposed of on above terms with no orders as to costs.

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(A.S.OKA, J.)